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Paper No. 5

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JUL 2 1 2004

OFFICE OF PETITIONS

In re Application of :
Jeromy Johnson :
Application No. 10/083,783 :
Filed: February 25, 2002 : **DECISION ON PETITION**
Title: AUTOMATIC BALL MARK :
RETRIEVAL SYSTEM (ACCULINX) :

BACKGROUND

This is a decision on the petition filed March 24, 2004 under 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn. A second copy of this petition was submitted on June 11, 2004.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (notice), mailed March 28, 2002, which indicated that substitute drawings were required and set a shortened statutory period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on May 29, 2002. A Notice of Abandonment was mailed January 26, 2004.

THE RELEVANT PORTION OF THE CFR AND MPEP

37 CFR 1.4: Nature of correspondence and signature requirements.

(d)

(1) Each piece of correspondence, except as provided in paragraphs (e) and (f) of this section, filed in an application, patent file, trademark registration file, or other proceeding in the Office which requires a person's signature, must:

(i) Be an original, that is, have an original signature personally signed in permanent ink by that person; or
(ii) Be a direct or indirect copy, such as a photocopy or facsimile transmission (§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original; or

(iii) Where an electronically transmitted trademark filing is permitted, the person who signs the filing must either
(A) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission; or

- (B) Sign the verified statement using some other form of electronic signature specified by the Commissioner.
- (2) The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any paper by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter. Violations of § 10.18(b)(2) of this chapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 10.18(c) of this chapter. Any practitioner violating § 10.18(b) may also be subject to disciplinary action. See §§ 10.18(d) and 10.23(c)(15).
- (e) Correspondence requiring person's signature and relating to registration practice before the Patent and Trademark Office in patent cases, enrollment and disciplinary investigations, or disciplinary proceedings must be submitted with an original signature personally signed in permanent ink by that person.
- (f) When a document that is required by statute to be certified must be filed, a copy, including a photocopy or facsimile transmission, of the certification is not acceptable.

MPEP 502.02 Correspondence Signature Requirements:

Correspondence filed in the Office, which requires a person's signature, may be an original, or a copy thereof. The word original, as used herein, is defined as correspondence which is personally signed in permanent ink by the person whose signature appears thereon. Where copies of correspondence are acceptable, photocopies or facsimile transmissions may be filed. For example, a photocopy or facsimile transmission of an original of an amendment, declaration (e.g., under 37 CFR 1.63 or 1.67), petition, issue fee transmittal form, authorization to charge a deposit account or a credit card, may be submitted in a patent application. Where copies are permitted, second and further generation copies (i.e., copy of a copy) are acceptable. For example, a client may fax a paper to an attorney and the attorney may then fax the paper to the Office, provided the paper is eligible to be faxed (see MPEP § 502.01). The original, if not submitted to the Office, should be retained as evidence of proper execution in the event that questions arise as to the authenticity of the signature reproduced on the photocopy or facsimile-transmitted correspondence. If a question of authenticity arises, the Office may require submission of the original.

When a document that is required by statute to be certified must be filed (such as a certified copy of a foreign patent application pursuant to 35 U.S.C. 119 or a certified copy of an international application pursuant to 35 U.S.C. 365) a copy of the certification, including a photocopy or facsimile transmission, will not be acceptable. The requirement for an original certification does not apply to certifications such as required under 37 CFR 1.8 since these certifications are not required by statute.

ANALYSIS

Unfortunately, Petitioner has failed to sign his petition. Pursuant to both 37 C.F.R. §1.4(d)(1) and MPEP §502.02, the petition cannot be accepted.

CONCLUSION

As such, the petition under 37 C.F.R. §1.181 must be **DISMISSED**.

Any response to this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The response should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.181."

Petitioner should note that the Office of Petitions does not have jurisdiction over petitions to withdraw the holding of abandonment, and therefore cannot render a decision on the merits.

The renewed petition should be submitted to the Office of Initial Patent Examination (OIPE) at:

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

After the mailing of this decision, the application file will be forwarded to OIPE.

Telephone inquiries regarding this decision should be directed to the Customer Service Branch of OIPE at 703-308-1202.

The phone number of the undersigned is (703) 305-0011. Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria, and the telephone number for the undersigned will change to 571-272-3225.



Paul Shanowski
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